



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 02-023

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. Section PI 35.02 (8) deletes the cross-reference to the definition of “pupils enrolled” in s. 121.004 (7) (a) to (cm), Stats., and creates a definition of “enrollment” or “pupils enrolled.” The analysis to the rule indicates that the change in the definition is simply a technical modification. However, there is a substantive difference between the statutory definition cross-referenced in the current rule and the proposed definition.

Section PI 35.02 (8) (a) and (b) 1., respectively, indicate that a first grade pupil may be counted only if the pupil attains the age ***required*** under s. 118.14, Stats., for first grade admission and that a pupil enrolled in kindergarten may be counted only if the pupil attains the age ***required*** under s. 118.14, Stats., for kindergarten admission. In contrast, the cross-referenced definition in current s. PI 35.02 (8) (that is, s. 121.004 (7) (a) to (cm), Stats.) ***also*** provides that a first grade pupil or pupil enrolled in kindergarten may be counted if the pupil attains the age ***permitted*** under s. 120.12 (25), Stats., which authorizes school boards to prescribe standards for early admission to kindergarten and first grade.

Because s. 120.12 (25), Stats., applies to the Milwaukee Public Schools (MPS) under s. 119.04 (1), Stats., this appears to be a substantive change in the definition, for which there does not appear to be statutory authority. This may be a theoretical concern if the MPS board has not permitted (and in the future does not permit) early admission under s. 120.12 (25), Stats. However, it appears that the administrative rule would be out of compliance with the statutes if the MPS board currently (or in the future) permits early admission.

b. Section PI 35.03 (3) indicates that a temporary certificate of occupancy will not meet the health and safety requirements of that subsection. The statutes require that a choice school meet all of the health and safety laws or codes that apply to public schools. [See s. 119.23 (2) (a) 5., Stats.] Therefore, the proposed amendment to s. PI 35.03 (3) appears to be appropriate only if a temporary certificate of occupancy would not be permitted with respect to a public school. Is that the case?

2. Form, Style and Placement in Administrative Code

a. In s. PI 35.02 (8), the introduction should be renumbered as par. (a) and the remaining paragraphs and internal cross-references should be renumbered accordingly.

b. In s. PI 35.02 (11), “s.” should be inserted immediately preceding the references to “PI 35.04 (6) (a)” and “PI 35.043 (1) (c)”. [See s. 1.07 (2), Manual.]

c. Section PI 35.02 (16) changes the definition of “pupil attendance rate” to refer to “average attendance rate.” This change means that the definitions are no longer in alphabetical order. Section PI 35.02 (16) should be shown as renumbered s. PI 35.02 (2m) and amended. [See s. 1.01 (7) (a), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. PI 35.01, the amendment of the last sentence leaves two items in a series, rather than three items in a series. Therefore, the comma between the first two items should be eliminated and should be shown as overstruck because it is replaced by the addition of the word “and”.

b. In s. PI 35.025, the phrase “in the program” should be changed to “in the choice program” in order to use the defined term. A similar comment applies to the last sentences of s. PI 35.03 (3) and (5) (b) 1. (intro.).

c. To be consistent with the statutes and the remainder of ch. PI 35, in s. PI 35.03 (1) (d), “student” should be changed to “pupil.” A similar comment applies to ss. PI 35.03 (5) (b) 1. b. and 35.04 (4m).

d. Section PI 35.03 (5) (b) (intro.) would be more consistent with the statutes if it indicated that the school has met “at least” one of the following criteria, rather than indicating that it must meet one of the following criteria. [See s. 119.23 (7) (a) (intro.), Stats.] Similarly, “shall” could be deleted in the first sentence of s. PI 35.03 (5) (b) 1. (intro.).